

REMARKS

Reconsideration of the application is respectfully requested.

The Office has rejected pending claims 1, 3-10, 12-13 and 15-17 under 35 U.S.C. 103(a) as being unpatentable over Reimer et al. (WO 01/37850) in view of O'Callaghan et al. (WO 93/04593). According to the Office it would have been obvious to use the hypoallergenic whey protein hydrolysates taught by O'Callaghan in place of the sweet or acid whey protein in the method of treating diabetes as taught by Reimer.

The Final Rejection provides an extensive rationale for the rejection of the pending claims. The Office, however, has hardly substantiated why it would have been obvious to employ a whey protein hydrolysate which "has a molecular weight profile as measured by SEC-HPLC of 30-40 wt% greater than 10,000 Dalton, 7-12 wt% in the range of 5,000-10,000 Dalton, 15-25 wt% in the range of 2,000-5,000 Dalton and 30-45 wt% less than 2,000 Dalton."

At the bottom of page 9, the Office states: "In regards to Applicant's argument that Tables 2, 4, 6 8 and 10 (of O'Callaghan reference) contain only a minor fraction of material having a molecular weight in excess of 5,000 Daltons, O'Callaghan teaches different ranges of whey protein hydrolysate profile. Therefore, it would have been obvious to one of ordinary skill in the art to optimize the concentrations of the whey protein profile to optimize the GLP-1 secretion and control glucose homeostasis in the subject. Controlling glucose homeostasis (blood/sugar regulation) will regulate the availability of glucose to maximize its energy (ATP) making potential in the body. Therefore, the whey protein hydrolysates taught by Reimer et al. and O'Callaghan et al.